Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: May 8, 2015

CLAIM NO. 201300749

DENISE LACROIX PETITIONER

VS. **APPEAL FROM HON. JOHN B. COLEMAN, ADMINISTRATIVE LAW JUDGE**

FORD MOTOR COMPANY
and HON. JOHN B. COLEMAN,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING IN PART,
VACATING IN PART, AND REMANDING
* * * * * *

BEFORE: ALVEY, Chairman, STIVERS and RECHTER, Members.

STIVERS, Member. Denise Lacroix ("Lacroix") seeks review of the October 6, 2014, Opinion, Award, and Order of Hon. John B. Coleman, Administrative Law Judge ("ALJ") awarding temporary total disability ("TTD") benefits and a period of medical benefits but dismissing her claim for permanent partial disability ("PPD") benefits and future medical

benefits against Ford Motor Company ("Ford"). Lacroix also appeals from the November 10, 2014, Order overruling her petition for reconsideration.

On appeal, Lacroix challenges the ALJ's determination she did not sustain a permanent injury. In the alternative, she argues the ALJ erred in the duration of medical benefits and TTD benefits awarded.

Lacroix's Form 101 alleges that on October 24, 2012, "due to the repetitive nature of the Plaintiff's employment, the Plaintiff has sustained an occupationally disabling injury." The right lower extremity was listed as the body part injured.

Lacroix testified by deposition on August 28, 2013. She testified that in 2004 she had a non-work-related motor vehicle accident resulting in a back injury. At the time of her deposition she was taking medication for her hip and back.

When Ford's plant in Minnesota closed, Lacroix transferred to the Louisville plant in December 2011. Within two weeks of moving to the Louisville plant she moved to the "door kick in job" which was the position she held on the date of the alleged October 24, 2012, injury. The job Lacroix was performing at the time of the injury involved bending over lifting boxes and putting them on a

conveyer line. At some point, she changed how she lifted the boxes. She had been bending over and lifting with her back which fatigued her back. As a result, she started lifting by squatting down and lifting up. When this occurred, she experienced pain in her right hip. She explained the pain on October 24, 2012, was instantaneous and worsened thereafter. Lacroix reported this to her supervisor and was sent to the medical department who sent her to Dr. Greg Rennirt. On December 14, 2012, Dr. Rennirt examined her and injected her hip. She continued to work for Ford. Because Dr. Rennirt thought her problem was with her back, he referred Lacroix to Dr. Kris Abeln who ordered an MRI. She first saw Dr. Abeln on January 14, 2013, and underwent an arthrogram of the right hip and an MRI of the back.

Lacroix sought treatment from Dr. David Palmer and Dr. William Schneider, orthopedic surgeons in St. Paul, Minnesota. She testified Dr. Palmer diagnosed a labral tear and found an impingement and lesion and performed outpatient surgery to repair the tear. At the time of the deposition, Dr. Palmer had not released Lacroix to return to work. She believes the surgery was successful as her hip is much better.

At the August 15, 2014, hearing, Lacroix testified the job she had been doing prior to and at the time of the injury involved a lot of walking, bending, squatting, stooping, twisting, turning, pushing, and pulling. It also required her to work above the shoulder level. Lacroix estimated she lifted up to fifteen pounds. The job required her to pick up boxes, turn, and put them on a conveyer. She estimated she handled approximately thirty boxes an hour. She was also required to scan paper and hook up wires.

Lacroix testified that on October 24, 2012, she could no longer handle the pain in her right leg and hip. She estimated she experienced symptoms approximately a month prior to the date of injury. Although she was sent to physical therapy, put on medication, and light duty restrictions were imposed, Lacroix continued to do her regular job. Sometime thereafter she moved to putting on door handles. She estimated Dr. Abeln saw her approximately twelve times and during that time continued her on light duty. During this time, Lacroix was able to perform the door handle job. After she was taken off work by Dr. Abeln, Lacroix returned to work on January 2, 2014, with no restrictions.

Lacroix's current job involves a lot of bending, straining, and stooping. As a result, she has again developed hip problems. She explained her current job is a "regular bid job." When she was put on restrictions she floated from job to job. Her current restrictions, which were to be reviewed in October, are no bending, twisting, or heavy lifting. Lacroix's current symptoms are throbbing pain in the hip and buttocks radiating down past her knee. Bending, squatting, and walking intensify the pain. She also has problems sleeping.

Lacroix is unable to perform gardening or yard work. She takes anti-inflammatories. Lacroix does not believe she can return to her pre-injury work duties nor can she perform most assembly line jobs at Ford. She estimated she worked at her pre-injury job approximately eight months before she reported to Ford's medical department. She estimated she was off work eleven months. She works forty hours per week plus overtime.

Ford introduced its medical records concerning Lacroix, Dr. Rennirt's records, Dr. Abeln's record, and the records of Robert Emig, a chiropractor who had been treating Lacroix prior to the subject injury. It also introduced two reports from Dr. Martin Schiller and the report of Dr. Robert Jacob.

Lacroix introduced the records of Drs. Schneider and Palmer with St. Croix Orthopedics and two reports from Dr. Jerry Morris.

In finding Lacroix sustained a temporary injury, the ALJ provided the following analysis and conclusion:

> After a review of the entirety of the medical and lay evidence, not only as summarized above but as contained in the entire record, I am most convinced by the medical opinions rendered by Dr. Robert Jacob. Dr. Jacob offered his opinion that the plaintiff's work activities temporarily aggravated the plaintiff's pre-existing anatomical condition, but the surgery and subsequent condition were unrelated to the plaintiff's work on the "kit in job" which temporarily aggravated the bursitis due to the repetitive squatting activities. It is important to note that when the plaintiff's [sic] first sought medical treatment with Dr. Emig she did in fact relate her condition back to a 2004 automobile accident. The records then reflect the history of the aggravation of the symptoms by the work activities requiring her to do repetitive squatting. Therefore, I find that as result of the plaintiff's work activities with Ford Motor Company that on or about October 24, 2012 she sustained a temporary exacerbation or a painful flare of her pre-existing non-work related hip condition. I am not convinced the work activities resulted in a permanent harmful change.
>
> In order to qualify for permanent partial disability under KRS 342.730, the claimant is required to prove not only the existence of a harmful change

> as a result of the work related traumatic event, but also required to prove the harmful change resulted in a permanent disability as measured by an AMA impairment. Where no permanent disability or change is caused by the injury, the claimant is entitled to medical expenses that were incurred while treating the temporary flare-up of symptoms or temporary total disability benefits that resulted from the incident. See *Robertson v. United Parcel Service, 64 S.W.3d 284 (Ky. 2001)*.

Concerning Lacroix's entitlement to medical benefits and TTD benefits, the ALJ concluded:

> In this instance, the plaintiff was placed on light duty, but was able to continue working until February 2013. Dr. Abeln kept the plaintiff off work for right hip bursitis through May 29, 2013. However, on May 28, 2013, the plaintiff underwent surgery for the pre-existing condition at St. Croix Orthopedics. Therefore, it is clear the plaintiff is entitled to medical benefits for the exacerbation of right hip pain from October 24, 2012 through May 28, 2013 and temporary total disability benefits from February 1, 2013 through May 28, 2013. The plaintiff's claim for permanent income and medical benefits must be dismissed.

Consequently, TTD benefits were awarded from February 1, 2013, through May 28, 2013, and medical benefits were awarded from October 24, 2012, through May 28, 2013. Lacroix filed a petition for reconsideration asserting the ALJ had committed patent error by dismissing

her claim for permanent income and future medical benefits. She maintained the medical records reference degeneration and arthritis pre-dating the onset of her symptoms and limitations in the fall of 2012. She noted the diagnosis and medical treatment for her hip condition was not disputed and there was a definitive need for the medical treatment including surgery on May 28, 2013. Consequently, she asserted the ALJ erred in finding she sustained a temporary injury lasting up to the time she underwent surgery.

Lacroix also asserted the ALJ erroneously relied upon Robertson v. United Parcel Service, 64 S.W.3d 284 (Ky. 2001) and she was entitled to permanent income and medical benefits. She asserted that as a result of her job duties, a pre-existing dormant degenerative condition was aroused into disabling reality requiring medical treatment. Further, her symptoms and limitations continued after the surgery.

Finding Lacroix's petition for reconsideration to be a re-argument of the evidence, the ALJ overruled the petition for reconsideration by order dated November 10, 2014.

Lacroix first contests the ALJ's decision by noting that prior to October 2012 she was working for Ford

without work restrictions and was fully capable of performing her work duties. However, following her surgery and return to work, she has work restrictions and limitations. Lacroix argues there is no question there was an injury not of a temporary nature. Consequently, the facts of the case *sub judice* do not fall within the purview of Robertson, supra.

Lacroix notes the ALJ relied solely upon the opinions of Dr. Jacob and even though Dr. Jacob believed she sustained a temporary work injury, he does not opine as to whether the pre-existing condition was active or dormant. Lacroix contends Ford did not meet its burden of proof in establishing a pre-existing active condition as required by Robertson, supra. Therefore, the matter should be remanded to the ALJ to render additional findings of fact regarding the injury and the arousal of a pre-existing dormant condition. Further, the ALJ should be directed to award permanent income and medical benefits.

Alternatively, Lacroix argues the ALJ erred by not awarding medical benefits from the date of the work injury until the date she reached maximum medical improvement ("MMI") or returned to work for Ford. Lacroix notes the ALJ terminated the award of medical benefits on the date of her surgery instead of the date of MMI.

Therefore, she contends the ALJ's award is arbitrary and erroneous. She asserts the award of medical benefits should be vacated and the claim remanded to the ALJ with directions to award medical benefits from the date of the injury to the date of MMI.

Finally, Lacroix asserts if the determination she sustained a temporary injury is upheld the ALJ committed reversible error by not commencing the award of benefits "on the date of injury or December 24, 2012 until such time [Lacroix] reached MMI or the date she returned to work following her surgery." She notes the ALJ limited the award of TTD benefits from February 1, 2013, up to the date of surgery on May 28, 2013, instead of the date of MMI.

As the claimant in a workers' compensation proceeding, Lacroix had the burden of proving each of the essential elements of her cause of action. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Lacroix was unsuccessful in proving she sustained a permanent injury, the question on appeal is whether the evidence compels a different result. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Compelling evidence" is defined as evidence that is so overwhelming no reasonable person could reach the same conclusion as the ALJ. REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985). The

function of the Board in reviewing the ALJ's decision is limited to a determination of whether the findings made by the ALJ are so unreasonable under the evidence that they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000).

As fact-finder, the ALJ has the sole authority to determine the weight, credibility and substance of the evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the discretion to determine all reasonable inferences to be drawn from the evidence. Miller v. East Kentucky Beverage/Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997); Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979). The ALJ may reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000). Although a party may note evidence that would have supported a different outcome than that reached by an ALJ, such proof is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to the weight and credibility to be afforded the evidence or by noting

reasonable inferences that otherwise could have been drawn from the record. Whittaker v. Rowland, 998 S.W.2d 479, 481 (Ky. 1999). So long as the ALJ's ruling with regard to an issue is supported by substantial evidence, it may not be disturbed on appeal. Special Fund v. Francis, 708 S.W.2d 641, 643 (Ky. 1986).

In a September 28, 2013, independent medical evaluation ("IME") report, Dr. Jacob discussed Lacroix's medical history, present symptomology, and his findings upon physical examination. He noted that in January 2013, Dr. Hamilton at the Occupational Medical Clinic noted Lacroix was walking without apparent pain. Based on his assessment of her complaints, her mechanism of injury and her findings at that time, Dr. Hamilton felt her occupational bursitis had resolved and her current complaints were unrelated to the reported squatting incident. Dr. Jacob also noted Dr. Abeln found evidence of bursitis and tendonitis which are extraarticular structures about the hip and treated her symptomatically with continued recommendations for injection and therapy which Lacroix claimed did not work. Dr. Abeln also obtained an additional MR arthrogram of the right hip, which Dr. Jacob noted was the gold standard of diagnostic studies for hip joint pathologies especially for labral injuries or tears

and/or impingement syndrome. This second study with arthrogram was also normal with no evidence of intraarticular pathology and specifically no evidence of a labral tear and no evidence of a femoral acetabular impingement.

Dr. Jacob noted Lacroix sought treatment in Wisconsin.[1] However, none of those records were available for his review. Lacroix told Dr. Jacob that following her surgery in May she continued to be symptomatic and her physician administered additional injections in the lateral hip. Lacroix had been discharged for routine care by that physician but she was placed on light duty restrictions until December 2013. Lacroix had been off work on personal leave since January 2013. His physical examination of the lumbar spine and right hip was "entirely within normal limits with full range of motion." Dr. Jacob expressed the following opinion:

> It is my opinion based on her history, her physical examination, and review of her medical records including her diagnostic studies that she may have sustained a right hip strain and/or a glutea minimus trochanteric bursitis of uncertain causation which became manifest in October 2012. Her mechanism of reported injury of squatting to pick up trays on a lower shelf may have temporarily aggravated a preexisting

[1] Lacroix was actually seen in Minnesota.

> condition. Her original MRI noted a gluteus medius and a gluteus minimus tendonitis and tendinopathy type changes but there is no evidence on any of available diagnostic studies including sophisticated imaging of two MRIs and arthrogram, which are highly sensitive and specific for intraarticular pathology and anatomic changes in the femoral acetabular relationship that would cause a femoral acetabular impingement. These FA impingement problems are anatomic developmental morphologic changes are not traumatic.

Dr. Jacob noted Drs. Rennirt and Abeln were unable to identify any significant pathologic causation for Lacroix's subject complaints. Their clinical examinations indicate subjective tenderness suggestive of the trochanteric bursitis for which she was appropriately treated. Dr. Jacob concluded Lacroix's work-related issues resolved in January 2013. As of the date of his examination, he concluded Lacroix had sustained no harmful change to the human organism as a result of work activities in October 2012. Further, Lacroix was fully capable of returning to work performing the normal job responsibilities she was performing prior to the alleged work incident and can return to work without restrictions.

Dr. Jacob took issue with Dr. Jerry Morris' impairment rating noting his IME was performed prior to Lacroix's most recent MR arthrogram in Louisville which was

normal with no evidence of a labral tear or an FA impingement. He noted Dr. Morris utilized gait derangement criteria in Chapter 17 of the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides") based on her reported use of an assistive device. The criteria established in Chapter 17 of the AMA Guides states an impairment rating for gait should be supported by pathologic findings such as x-rays. In this case, Lacroix's x-rays were normal. Further, the AMA Guides state that whenever possible the evaluator should use a more specific method and further states the lower limb impairment in Table 17-5 is stand alone and not combined with any other impairment evaluation method. Specifically, it rules out Chapter 18.[2]

More importantly, Dr. Jacob concluded the impairment rating was assessed not only before Lacroix reached MMI but was done before additional treatment was rendered. Therefore, the impairment rating is no longer valid for the above reason and because at the present time, Lacroix is using no form of external support or device. Further, Lacroix acknowledged she was better, had no limp, and had full range of motion. There was negative

[2] Chapter 18 of the AMA Guides relates to impairments for pain.

provocative testing for femoral acetabular impingement, labral tear, or trochanteric bursitis. It was Dr. Jacob's opinion that the medical records support the conclusion of Dr. Hamilton that Lacroix's work-related incident had resolved in January 2013. As a result, he believed Lacroix had non-occupationally related issues and any treatment rendered after January 2013 was for unrelated problems as the mechanism of injury would not be compatible with a labral tear or a femoral acetabular impingement.

In an addendum dated October 7, 2013, Dr. Jacob stated that pursuant to the AMA Guides he believed Lacroix had no permanent impairment rating for the alleged work event or activities. Further, there was no applicable diagnosis or conditions for which Lacroix sustained a harmful change to the human organism.

In a report dated July 3, 2014, Dr. Schiller stated he was unable to make a diagnosis as to Lacroix's symptomology. Dr. Schiller stated it was his opinion that Dr. Jacob's IME was accurate and he concurred with his opinions. He also stated Dr. Morris' IME was inaccurate and should be ignored.

The Kentucky Supreme Court held in Robertson v. United Parcel Service, supra, that it is possible for a claimant to submit evidence of a temporary injury for which

temporary income and medical benefits may be awarded, yet fail in the burden to prove a permanent harmful change to the human organism for which permanent benefits are appropriate. The claimant, in Robertson, supra, failed to prove more than a temporary harmful change as a result of the work injury. Thus, the Court ruled the claimant was not entitled to income benefits or future medical expenses, but was limited to being compensated for only those medical expenses incurred in treating the temporary symptoms that resulted from the work-related incident.

Contrary to Lacroix's assertions, the opinions of Drs. Jacob and Schiller, constitute substantial evidence upon which the ALJ was free to rely in reaching a decision on the merits. Kentucky Utilities Co. v. Hammons, 145 S.W.2d 67, 71 (Ky. App. 1940) (citing American Rolling Mill Co. v. Pack et al., 128 S.W. 2d 187, 190 (Ky. App. 1939). Moreover, in line with Robertson, supra, we believe the ALJ could reasonably conclude from the evidence that the injury produced only temporary harmful changes involving Lacroix's hip that were transient in duration, fully resolved in January 2013, and Lacroix returned to her pre-injury baseline state of health, and sustained no permanent impairment or disability.

We find no merit in Lacroix's assertion the matter should be remanded to the ALJ to render additional findings concerning the injury and the arousal of a pre-existing dormant condition. Significantly, in the Form 101, Lacroix did not allege a dormant non-disabling condition had been aroused into disabling reality. Rather, she argued the repetitive nature of her employment caused her to sustain an occupational injury. More importantly, in his April 3, 2013, report under the heading "Explanation of Causal Relationship," Dr. Morris stated "[t]he forces experienced in squatting activity and the subsequent repetition of the force were of sufficient force and magnitude to cause this harm to [Lacroix's] human organism." In a subsequent report dated September 25, 2013, Dr. Morris stated the same. Dr. Morris, upon whose impairment Lacroix relied, did not offer the opinion the mechanism of the injury was an arousal of a dormant non-disabling condition into disabling reality.

As previously stated, where the evidence with regard to an issue preserved for determination is conflicting, the ALJ is vested with the discretion to pick and choose whom and what to believe. Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky. 1977). Because the outcome selected by the ALJ is supported by the record, we

are without authority to disturb his decision concerning the temporary nature of the injury on appeal. Special Fund v. Francis, supra. Clearly, the evidence of record does not compel a different result.

That said, the ALJ must provide a sufficient basis to support his determination. Cornett v. Corbin Materials, Inc., 807 S.W.2d 56 (Ky. 1991). Parties are entitled to findings sufficient to inform them of the basis for the ALJ's decision to allow for meaningful review. Kentland Elkhorn Coal Corp. v. Yates, 743 S.W.2d 47 (Ky. App. 1988); Shields v. Pittsburgh and Midway Coal Mining Co., 634 S.W.2d 440 (Ky. App. 1982). We are cognizant of the fact an ALJ is not required to engage in a detailed discussion of the facts or set forth the minute details of his reasoning in reaching a particular result. The only requirement is the decision must adequately set forth the basic facts upon which the ultimate conclusion was drawn so the parties are reasonably apprised of the basis of the decision. Big Sandy Community Action Program v. Chaffins, 502 S.W.2d 526 (Ky. 1973).

Here, the ALJ has not set forth sufficient findings in order for this Board to determine the basis of his award of medical benefits and TTD benefits. Concerning the award of medical benefits, we note the ALJ relied upon

the opinions of Dr. Jacob in determining Lacroix only sustained a temporary injury. It was Dr. Jacob's opinion the work-related issues resolved in January 2013. However, the ALJ awarded medical benefits through May 28, 2013. He noted Dr. Abeln had kept Lacroix off work for right hip bursitis through May 29, 2013. Since the ALJ relied upon Dr. Jacob and did not rely upon the opinions of Dr. Abeln, we are unable to determine the basis for the ALJ's determination that Lacroix is entitled to medical benefits from October 24, 2012, through May 28, 2013. This is particularly true in light of Dr. Jacob's opinion that Lacroix's injury had resolved by January 2013. Thus, the claim must be remanded for the ALJ to provide specific findings regarding the medical benefits to which Lacroix is entitled after October 24, 2012.

Similarly, we are unable to determine the basis for the ALJ's determination Lacroix was entitled to TTD benefits from February 1, 2013, through May 28, 2013.

KRS 342.0011(11)(a) defines temporary total disability as follows:

> 'Temporary total disability' means the condition of an employee who has not reached maximum medical improvement from an injury and has not reached a level of improvement that would permit a return to employment.

The above definition has been determined by our courts of justice to be a codification of the principles originally espoused in W.L. Harper Construction Company v. Baker, 858 S.W.2d 202 (Ky. App. 1993), wherein the Court of Appeals stated generally:

> TTD is payable until the medical evidence establishes the recovery process, including any treatment reasonably rendered in an effort to improve the claimant's condition, is over, or the underlying condition has stabilized such that the claimant is capable of returning to his job, or some other employment, of which he is capable, which is available in the local labor market. Moreover, . . . the question presented is one of fact no matter how TTD is defined.

Id. at 205.

In Central Kentucky Steel v. Wise, 19 S.W.3d 657 (Ky. 2000), the Kentucky Supreme Court further explained that "[i]t would not be reasonable to terminate the benefits of an employee when he is released to perform minimal work but not the type that is customary or that he was performing at the time of his injury." Id. at 659. In other words, where a claimant has not reached maximum medical improvement ("MMI"), TTD benefits are payable until such time as the claimant's level of improvement permits a return to the type of work he was customarily performing at the time of the traumatic event.

More recently, in Magellan Behavioral Health v. Helms, 140 S.W.3d 579 (Ky. App. 2004), the Court of Appeals instructed that until MMI is achieved, an employee is entitled to a continuation of TTD benefits so long as he remains disabled from his customary work or the work he was performing at the time of the injury. The court in Magellan Behavioral Health v. Helms, supra, stated:

> In order to be entitled to temporary total disability benefits, the claimant must not have reached maximum medical improvement and not have improved enough to return to work.
>
> . . .
>
> The second prong of KRS 342.0011(11)(a) operates to deny eligibility to TTD to individuals who, though not at maximum medical improvement, have improved enough following an injury that they can return to work despite not yet being fully recovered. In Central Kentucky Steel v. Wise, [footnote omitted] the statutory phrase 'return to employment' was interpreted to mean a return to the type of work which is customary for the injured employee or that which the employee had been performing prior to being injured.

Id. at 580-581.

In Double L Const., Inc. v. Mitchell, 182 S.W.3d 509, 513-514 (Ky. 2005), with regard to the standard for awarding TTD, the Supreme Court elaborated as follows:

> As defined by KRS 342.0011(11)(a), there are two requirements for TTD: 1.) that the worker must not have reached MMI; and 2.) that the worker must not have reached a level of improvement that would permit a return to employment. *See* Magellan Behavioral Health v. Helms, 140 S.W.3d 579, 581 (Ky. App. 2004). In the present case, the employer has made an 'all or nothing' argument that is based entirely on the second requirement. Yet, implicit in the Central Kentucky Steel v. Wise, supra, decision is that, unlike the definition of permanent total disability, the definition of TTD does not require a temporary inability to perform 'any type of work.' *See* KRS 342.0011(11)(c).
>
> . . .
>
> Central Kentucky Steel v. Wise, supra, stands for the principle that if a worker has not reached MMI, a release to perform minimal work rather than 'the type that is customary or that he was performing at the time of his injury' does not constitute 'a level of improvement that would permit a return to employment' for the purposes of KRS 342.0011(11)(a). 19 S.W.3d at 659.

The ALJ awarded TTD benefits from February 1, 2013, through May 28, 2013, in spite of Dr. Jacob's opinion the "work-related issues were resolved in January 2013." Further, the ALJ did not engage in the two prong analysis required by Central Kentucky Steel v. Wise, supra, in arriving at his award of TTD benefits. We note there is no award of TTD benefits from the date of the injury up to and

including the month of January 2013. The record establishes Dr. Abeln initially saw Lacroix on January 14, 2013. In his report of that date, Dr. Abeln did not indicate Lacroix should be taken off work. The first notation from Dr. Abeln directing Lacroix should remain off work is dated January 24, 2013. In that note Dr. Abeln stated he would give Lacroix a note to be off work to let the injection start to do its job. He placed a return to work date on February 4, 2013. On January 30, 2013, he noted he would allow Lacroix to return to work on February 11, 2013. On February 13, 2013, Dr. Abeln indicated he would return Lacroix to work at sit down duty. On March 28, 2013, he indicated he would keep her off work until he could ascertain a diagnosis. Dr. Abeln's April 11, 2013, note contains no discussion about Lacroix remaining off work. However, his April 29, 2013, note indicates he would keep Lacroix off work for another month. Significantly, Dr. Abeln and Dr. Jacob do not specifically discuss the date Lacroix attained MMI. In both his April 3, 2013, and September 25, 2013, reports under the heading "MMI," Dr. Morris stated as follows:

> She has no medical treatments recommended nor offered to relieve her current symptoms, and her recovery has reached a plateau, so she needs

> criteria for maximum medical improvement.
>
> She should have pain management medical services made available to her, along with orthopedic monitoring since she is likely to develop degenerative arthritis in this right hip joint, which may eventually result in a hip replacement.

His reports presumably indicate she has not yet reached MMI. We add that in a medical questionnaire attached to his April 3, 2013, report, Dr. Morris checked "yes" in response to the question "do you feel my client has reached maximum medical improvement?" That report is trumped by the statement contained in his latter report of September 25, 2013, which indicates Lacroix had not reached MMI.

Thus, we are unable to determine the basis for the ALJ's award of TTD benefits given his reliance upon the opinions of Dr. Jacob. Further, the ALJ's opinion is devoid of the analysis required by Central Kentucky Steel v. Wise, supra. Such an analysis is specifically needed since Lacroix continued to work after the October 24, 2012 injury until taken off work by Dr. Abeln on January 24, 2013. Lacroix testified that during this period she was moved to putting on door handles. Thus, the matter must be remanded to the ALJ for a determination of Lacroix's

entitlement, if any, to TTD benefits in accordance with the analysis required by Central Kentucky Steel v. Wise, supra.

Accordingly, those portions of the October 6, 2014, Opinion, Award, and Order and the November 10, 2014, Order overruling the petition for reconsideration finding Lacroix sustained a temporary work injury are **AFFIRMED**. Those portions of the October 6, 2014, Opinion, Award, and Order and the November 10, 2014, Order relating to the award of medical benefits and TTD benefits are **VACATED**. This claim matter is **REMANDED** to the ALJ for entry of an amended opinion and award determining the extent of the medical benefits and TTD benefits to which Lacroix is entitled.

ALL CONCUR.

COUNSEL FOR PETITIONER:

HON CHED JENNINGS
455 S FOURTH ST STE 1450
LOUISVILLE KY 40202

COUNSEL FOR RESPONDENT:

HON PHILIP J REVERMAN JR
400 W MARKET ST STE 2300
LOUISVILLE KY 40202

ADMINISTRATIVE LAW JUDGE:

HON JOHN B COLEMAN
107 COAL HOLLOW RD STE 100
PIKEVILLE KY 41501